

***United States Court of Appeals  
for the Second Circuit***



**AMICUS BRIEF**



ORIGINAL  
WITH PROOF  
OF SERVICE

75-7061

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UNITED STATES COURT OF APPEALS

*for the*

SECOND CIRCUIT

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TRINITY EPISCOPAL SCHOOL CORPORATION and  
TRINITY HOUSING COMPANY, INC.,

Plaintiffs-Appellants,

ROLAND H. KARLEN, ALVIN C. HUDGINS and  
CONTINUE,

Intervening Plaintiffs-Appellants,

v.

GEORGE ROMNEY, et al.,

Defendants-Appellees,

STRYCKER'S BAY NEIGHBORHOOD COUNCIL, INC.,

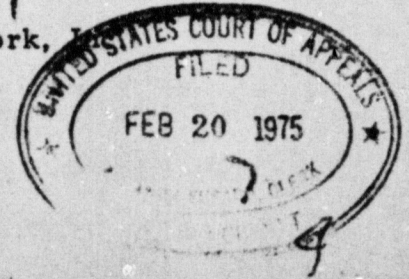
Intervening Defendant-Appellee.

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BRIEF OF THE REAL ESTATE BOARD OF  
NEW YORK, INC., AS AMICUS CURIAE

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UNITED STATES COURT OF APPEALS  
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BRIEF OF THE REAL ESTATE BOARD  
OF NEW YORK, INC., AS AMICUS CURIAE

This brief is filed as amicus curiae in this appeal by The Real Estate Board of New York, Inc., a domestic membership corporation organized primarily to protect and promote the real estate industry. The Real Estate Board of New York, Inc. has over 3,000 members, which includes a large number of individuals who have



frequent occasion to contract with the City of New York and the other appellees on this appeal for the development, construction, ownership, operation and management of real estate in the City of New York and to whom the issues involved in this action are of major significance.

Permission to file this brief as amicus curiae is being sought in a motion to this Court filed simultaneously herewith.

This action was instituted by Trinity Episcopal School Corporation and Trinity Housing Company, Inc. in 1971 against the City of New York, the State of New York and the United States Government. Subsequently, permission was granted by the Federal District Court to permit Strycker's Bay Neighborhood Council Inc. to intervene as defendant in the action and to Roland H. Karlen, Alvin C. Hudgins and CONTINUE to intervene as plaintiffs in the action.

The action involves the Urban Renewal Plan (hereinafter called the "Plan") for the development of the West Side Urban Renewal Area (hereinafter called the "Area") between 87th and 97th Streets and Central Park West and Amsterdam Avenue, in the Borough of Manhattan,

City and State of New York. Studies leading up to the development of the Plan were initiated in or about 1955 and the Plan was approved and put into execution in 1962 and is still, at the time of the writing of this brief, in execution.

The action by appellants seeks injunctive relief to prevent appellees from continuing to process the Plan in a manner which will emasculate the purposes of the Plan to renew the Area into a balanced integrated community and will instead lead inevitably to the area becoming a segregated slum.

A motion was made for a temporary injunction to restrain appellees from building on Site 30 during the pendency of the litigation and this motion was withdrawn during the trial of the case, but construction of Site 30 has nevertheless been held up pending the outcome of this litigation.

The relief sought by appellants in the action is as follows:

1. An order reinstating the lawful designation of Sites 30 and 4 as middle income sites to be developed with middle income housing.



2. An order permanently enjoining the construction of low income public housing at Sites 30 and 4.
3. An order directing the specific performance of the Plan which was incorporated into the contracts entered into by plaintiffs with defendant, City of New York.
4. An order directing that illegal site occupants (squatters) be removed from the West Side Urban Renewal Area as unlawful and inconsistent with the Plan.
5. An order that designated new middle income buildings be returned to a 70% middle income - 30% low income mixture, as agreed upon between the respective developers and defendant, City of New York.
6. An order by the Court retaining jurisdiction over the completion of the Plan in accordance with its legally constituted terms and appointment by this Court of a Special Master to oversee all continuing and further development in the Area, all of which is to be in accordance with the Plan; the said Special Master to have jurisdiction and supervision of all aspects of the execution of the Plan until its completion.
7. An order permanently enjoining the Federal commitment of funds to public housing at Site 30 because the National

Environmental Policy Act of 1969 has not been complied with and because the environmental quality of the Area is in such jeopardy that the National Environmental policy could not be fulfilled legally and would not be served by such Federal action.\*

The case proceeded to trial in September, 1973 and after extended adjournments to permit settlement negotiations to occur the trial was completed at the end of May, 1974. After the submission of extensive post-trial memoranda by counsel, the Trial Court on November 15, 1974, in a lengthy opinion, dismissed appellants' case and held for the appellees and appellants then appealed to this Court.

The Real Estate Board of New York, Inc. supports the arguments set forth in appellants' brief and will not repeat them.

This brief amicus curiae is submitted to highlight for the Court the widespread significance of this

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\*The Trial Court reserved decision on appellants' request for costs and attorneys' fees and directed that a separate application for this relief be made. The motion for such relief is returnable before the Trial Court in March, 1975.



case to the real estate industry throughout the nation and with particular reference to its effect upon the City of New York.

The decision of the District Court affirming the position of the government agencies involved, in effect, holds that where private citizens contract with their government and in good faith make major investments of money and life style in reliance upon the government's commitments, the government in response to political pressure may disregard these commitments and act in a manner which injures those who contract with them and negates the hundreds of millions of dollars invested by private and government sources.

This position the Real Estate Board believes will operate to the detriment of the entire city and its future. It will inhibit future development where reliance upon the government's performance of its obligations is an element involved in the success of a project.

The city, state and federal governments conceived of the Plan for the resuscitation of the Area almost 20 years ago, at a time when conditions in the area were deteriorating and if unchecked would have led it into

becoming a segregated slum.

The Area was studied extensively for a period of approximately 7 years, culminating in the approval of the Plan in 1962. The Plan contemplated the renewal of the Area by retaining the good buildings, rehabilitating salvageable buildings and demolishing and rebuilding the old dilapidated tenements in the Area. The Plan was engineered to redevelop the Area with a balanced cross-section of income categories so that it would be renewed as a balanced integrated community.

The execution of the Plan proceeded in accordance with this concept during the period from 1962 through 1969 and the Area was gradually being transformed as contemplated by the Plan. During this period a large number of sponsors contracted with the City of New York in reliance upon a proper execution of the Plan and upon the performance under the terms of the Plan that they observed when they entered into their contracts. Pursuant to these contracts hundreds of millions of dollars was spent by government and private sources to accomplish the purposes of the Plan.



However, beginning in 1970 a change occurred in the manner in which the government agencies proceeded with the execution of the Plan. A large number of squatters came into the Area and took over many of the old deteriorated buildings from which the prior tenants had been relocated and where it was contemplated the buildings would be demolished for the construction of new buildings. These illegal squatters refused to vacate and were ultimately recognized by the City of New York as legitimate occupants and have been permitted to stay on the site up to the present time. These squatters who were brought into the Area by radical groups were largely welfare and multi-problem families and created intolerable conditions for the other residents of the Area during this period. In addition, welfare families were admitted in large numbers into the new buildings constructed in the Area in excess of the ratio of 70% middle income and 30% low income families which had previously been designated by the City in the various contracts entered into with sponsors and developers. The City also increased the overall number of low income families allowed to move into the Area

beyond the limitation of 2500 such families, previously designated by the City and by the conversion of Sites 4 and 30 containing 430 units from middle income to low income housing. These changes, which had the effect of reversing the direction that the execution of the Plan had had prior to 1970 and is having the effect of leading to deterioration in the Area, which unless these procedures are curbed by the Courts will eventually cause the Area to tip and become a segregated ghetto. These changes were made as a result of pressure upon the government by political and radical groups and were contrary to the wishes of those who had remained in the Area or had come into the Area as a result of the commitments made by the government to effectuate the terms of the Plan.

The Area is presently dangerous and deteriorating rapidly as a result of these violations by the City of its commitments. This, in turn, led to the formation of a group called CONTINUE by residents and owners in the Area who protested the violation of their contracts and the Plan by the City. However, these protests to the governmental authorities did not result in any improvement



in the situation and this action was instituted by the Trinity School when conditions in the Area became intolerable.

The future of the Area is bleak and unless there is a reversal of the trend toward decay, the Area will eventually become a segregated ghetto and will result in the waste of two decades of effort and huge expenditures of funds by private and governmental sources.

The Real Estate Board of New York is vitally interested because of its desire to preserve a fine residential area of the City from decay and to see the successful accomplishment of the experiment embodied in the Plan to redevelop the Area into a balanced integrated community.

Accordingly, the Real Estate Board of New York respectfully supports appellants' request for a reversal of the decision of the District Court and for the appointment of a Special Master to review the manner in

which the City continues to administer the Area  
and to carry the Plan to completion.

Respectfully submitted,

HAROLD J. TREANOR  
Attorney for The Real Estate  
Board of New York, Inc.



Received <sup>2</sup> copies of the within  
Brief of the Real Estate Board of N.Y. Inc. as  
this 20 day of Feb, 1975. Amicus Curiae

Sign \_\_\_\_\_

For: Louis J. Lepore Esq(s).

Att'ys for State of N.Y. Defendant Appellee

Received <sup>2</sup> copies of the within  
Brief of the Real Estate Board of N.Y. Inc. as  
this 20 day of Feb, 1975. Amicus Curiae

Sign \_\_\_\_\_

For: Adrian Burke Esq(s).

Att'ys for City of N.Y. Appellee

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Sign M. L. L...

For: Martha P. Thompson Esq(s).

Att'ys for Intervening Defendant Appellee

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Brief of the Real Estate Board of N.Y. Inc. as  
this 20 day of Feb, 1975. Amicus Curiae

Sign \_\_\_\_\_

For: Paul J. Curran Esq(s).

Att'ys for Defendant Appellee

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HAVE THIS BEEN RECEIVED AT THE  
OFFICE OF THE CORPORATION COUNSEL

FEB 20, 1975

CORPORATION COUNSEL

COPY OF THE WITHIN PAPER  
**RECEIVED**  
DEPARTMENT OF JUSTICE

FEB 20 1975

NEW YORK OFFICE

ATTORNEY GENERAL

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PAUL J. CURRAN  
U.S. ATTORNEY  
SOUTHERN DISTRICT